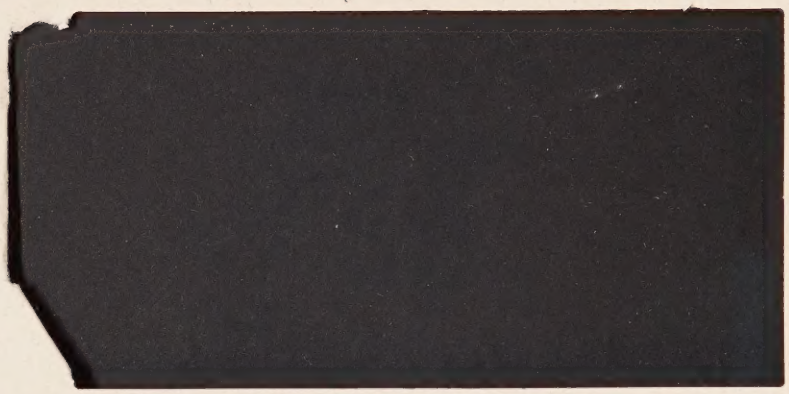
Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada

Federal Policy for the Settlement of Native Claims

Canada



Federal Policy for the Settlement of Native Claims

MARCH 1993

QS-5303-020-EE-A1

TABLE OF CONTENTS

EXECUTIVE SUMMARY

In Canada, the common law concept of Aboriginal rights and title has been recognized by the courts. The existing Aboriginal rights of Aboriginal peoples have also been recognized and affirmed under section 35 (1) of the *Constitution Act, 1982*.

The evolution and development of the federal government's land claims policy has been closely linked to court decisions. The first claims policy statement in 1973 was initiated by a decision of the Supreme Court of Canada (the 1973 *Calder* decision) which acknowledged the existence of Aboriginal title in Canadian law. In order to address uncertainties created by the decision, the federal government announced its intention to negotiate claim settlements. As the policy developed, claims were divided into two types:

1) **comprehensive claims** - based on the concept of continuing Aboriginal rights and title which have not been dealt with by treaty or other legal means; and

2) **specific claims** - arising from alleged non-fulfilment of Indian treaties and other lawful obligations, or the improper administration of lands and other assets under the *Indian Act* or formal agreements.

COMPREHENSIVE CLAIMS

The primary purpose of comprehensive claims settlements is to conclude agreements with Aboriginal groups that will resolve the legal ambiguities associated with the common law concept of Aboriginal rights. The process is intended to result in agreement on the special rights Aboriginal peoples will have in the future with respect to lands and resources. The objective is to negotiate modern treaties which provide clear, certain and long-lasting definition of rights to lands and resources. Negotiated comprehensive claims settlements provide for the exchange of undefined Aboriginal rights for a clearly defined package of rights and benefits codified in constitutionally protected settlement agreements.

Comprehensive claim agreements define a wide range of rights and benefits to be exercised and enjoyed by claimant groups. These may include full ownership of certain lands, guaranteed wildlife harvesting rights, participation in land and resource management throughout the settlement area, financial compensation, resource revenue-sharing and economic development measures.

In the provinces, most of the lands and resources which are the subject of comprehensive claim negotiations are under provincial jurisdiction. Moreover, by establishing certainty of title to lands and resources, claim settlements benefit the provinces. Canada therefore, takes the position that provinces must participate in negotiations and contribute to the costs of settlement. The federal government is currently negotiating cost-sharing agreements with the governments of British

Columbia, Newfoundland and Labrador, and Quebec. Territorial governments also participate in negotiations and have made commitments in negotiated agreements.

Significant amendments to the federal comprehensive claims policy were announced in December 1986, following an extensive period of consultation with Aboriginal groups. Key changes to the policy included the development of alternatives to blanket extinguishment of Aboriginal rights, as well as provision for the inclusion in settlement agreements of offshore wildlife harvesting rights, resource revenue-sharing, Aboriginal participation in environmental decision-making, and constitutionally entrenched commitments to negotiate separate legislated self-government agreements. The 1986 policy also provides for the establishment of interim measures to protect Aboriginal interests during negotiations, and the negotiation of implementation plans to accompany final agreements.

The fair and timely resolution of comprehensive claims is a priority of the Government of Canada. In announcing the federal government's Native Agenda in September 1990, the Prime Minister stated that the previous six-claim limit on comprehensive claims negotiations had been eliminated and that the process would be expanded.

Four comprehensive claims settlements have been concluded since the announcement of the federal government's claims policy in 1973. These include the James Bay and Northern Quebec Agreement (1975), the Northeastern Quebec Agreement (1978), the Inuvialuit Final Agreement (1984) and the Gwich'in Comprehensive Land Claim Agreement (1992).

Three additional northern claims are nearing completion. The Final Agreement of the Tungavik Federation of Nunavut claim was ratified by the Inuit in November 1992, and it is anticipated that the government ratification process will be completed in early 1993. As part of the Council for Yukon Indians claim, four Yukon First Nation Final Agreements have been initialled and one has been ratified by the First Nation. Negotiations for a final agreement with the Sahtu Dene and Métis were completed in January 1993, and negotiations with the Dogrib of the North Slave region (Northwest Territories) are expected to begin early in 1993.

In the provinces, Agreement-in-Principle negotiations are ongoing with the Nisga'a Tribal Council (B.C.), the Conseil des Atikamekw et des Montagnais (Quebec) and the Labrador Inuit Association. Framework Agreement negotiations are underway with the Innu Nation (formerly the Naskapi Montagnais Innu Association).

The federal government expects to negotiate about 30 claims in B.C. over the next decade. Canada, B.C. and the First Nations Summit have all accepted the recommendations of a tripartite task force on how to negotiate settlements in the province, and an agreement has been signed to establish an impartial Treaty

Commission to facilitate and monitor negotiations. It is the federal government's position, however, that a cost-sharing agreement must be negotiated with the provincial government before negotiations begin with First Nations. Cost-sharing negotiations are being actively pursued.

SPECIFIC CLAIMS AND TREATY LAND ENTITLEMENT

Specific Claims relate to the fulfilment of treaties and to the federal government's administration of Indian reserve lands, band funds and other assets. The government's primary objective with respect to specific claims is to discharge its lawful obligations to Indian bands.

Treaty Land Entitlement (TLE) is a large category of claims which relate primarily to a group of treaties that were signed with Indian bands, mainly in the prairie provinces. Not all bands received the full amount of land promised. Claims from bands for outstanding entitlements are categorized as TLE claims and are handled separately from other specific claims.

In 1973 the Department of Indian Affairs and Northern Development (DIAND) created the Office of Native Claims. By 1981 only 12 of over 70 claims submitted had been settled. In 1981 a review of the policy led to a number of changes. Of particular note was the government's decision *not* to apply the statutes of limitations (a federal or provincial statute which prohibits taking a claim before the courts after a certain length of time) or the doctrine of laches (a common law rule whereby the courts will not hear a claim if the claimant has, in the opinion of the court, waited too long to bring forward the claim), which up until then had excluded many specific claims from being accepted.

However, complaints about the program persisted. In 1990, the Minister of the Department of Indian Affairs and Northern Development initiated a series of meetings with Native leaders to discuss how the policy and process could be improved. The Specific Claims program was criticized as being:

- too slow, with the result that too few claims are settled;
- inherently unfair because of the government's multiple role as trustee of the Indian people, defender of the Crown's interests and judge for each claim submitted; and
- overly restrictive in its acceptance criteria, thus excluding legitimate claims.

In response to these criticisms, in April 1991 the government launched a Specific Claims Initiative in an effort to resolve claims more quickly, efficiently and fairly.

There were three main components to this initiative:

1. Funds for payment under settlements were quadrupled from $15 million to $60 million. The 1982 guideline restricting acceptance for negotiation of pre-Confederation claims was revoked (effective 1991).

2. The government established the Indian Specific Claims Commission. The purpose of the Commission is:

   - to review disputes between claimant bands and the government concerning the acceptance of claims and the choice of compensation criteria; and

   - when both parties agree, to assist the government and claimant bands in arranging mediation on any aspect of the negotiations.

   As an interim measure the Commission was established under the authorities of the *Inquiries Act*. As such, the Commission is independent of the department and has the power to subpoena records and witnesses.

3. A Joint First Nations/Government Working Group (JWG) was created to deal with the criticism that the existing Specific Claims Policy and process are overly restrictive. Among other things, the JWG is reviewing all the existing acceptance and compensation criteria on which the Specific Claims Policy is based. It will also make recommendations on the design of a dispute resolution system or process for resolving such claims between the federal government and First Nations. The group's recommendations will encompass evolution of the Indian Specific Claims Commission.

At the beginning of 1991 there were over 350 specific claims under review and over 60 claims in negotiation. In the 18 months since the announcement of the initiative in April 1991, 24 claims have been settled, at a total value of approximately $26 million. At least 25 specific claims, with a total value of approximately $50 million, were expected to be settled in 1992-93. An additional 30 claims were expected to be resolved in other ways (non-acceptance, referral to other processes, file closing by claimants, referral to court).

In September 1992, a historic Treaty Land Entitlement agreement was reached with First Nations in Saskatchewan. This agreement will involve settlement payments of over $450 million from Canada and the Province over a 12-year period.

OTHER CLAIMS

The Department of Indian Affairs and Northern Development is researching or negotiating settlement of a number of other legitimate Native grievances, which have sometimes been referred to as claims of a third kind. These grievances fall within the spirit of the comprehensive and specific claims policies, but do not meet strict program acceptance criteria.

There are two types of these claims:

1) **claims relating to Aboriginal title** - where Aboriginal title has been lawfully dealt with, but the process was not consistent with the reasonable standards of the time (e.g. the Golden Lake Algonquin claim); and

2) **claims relating to federal government responsibility** - where the claim does not meet the criteria for the specific claims process but government believes the claim should be dealt with on some other basis.

CONCLUSION

The resolution of Native land claims is one of the fundamental pillars of the federal government's Native Agenda. In order to meet its commitment to resolve claims, Canada has expanded the comprehensive claims process, accelerated and reformed the specific claims process, and is taking positive steps towards the resolution of claims which do not fit within these two categories. The federal government is working actively with Aboriginal groups and provincial and territorial governments to establish effective negotiation processes that will help build a new relationship between Aboriginal peoples and other Canadians.

BACKGROUND

ESTABLISHMENT OF THE POLICY FOR SETTLEMENT OF NATIVE CLAIMS

1. Concept of Aboriginal Rights

Early in the history of British North America, the *Royal Proclamation of 1763* set out a process prohibiting settlers within its geographic area of application from acquiring lands which were occupied by Aboriginal peoples and which had not been ceded to or purchased by the Crown. With Confederation in 1867, Canada assumed responsibility for applying this principle.

The common law concept of Aboriginal rights was addressed in the 1973 decision of the Supreme Court of Canada in the *Calder* case. In that case, the Nisga'a people of British Columbia asked for a declaration that they had continuing Aboriginal rights in their traditional territory. Six of the seven Supreme Court justices who heard the case acknowledged the existence of Aboriginal title in Canadian law, but split evenly on the issue of whether Aboriginal title continued to exist in British Columbia. The seventh justice ruled against the Nisga'a on a technical point of law.

A common law test for continuing Aboriginal rights was established in a 1979 decision of the Federal Court of Canada, Trial Division, in the *Baker Lake* case. The implications of this decision for land claims negotiations are described below in the section dealing with the acceptance of comprehensive land claims for negotiation.

When the Canadian Constitution was patriated in 1982, the central importance of the concept of Aboriginal rights to Aboriginal peoples was recognized. Section 35 (1) of the *Constitution Act, 1982* recognized and affirmed the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada.

In its 1990 judgment on the *Sparrow* case, the Supreme Court of Canada provided the first analysis of the implications of section 35 (1) of the Constitution. The decision established that a member of the Musqueam Band in British Columbia had a constitutionally protected Aboriginal right to fish in the waters at the mouth of the Fraser River.

The court also established, however, that the exercise of Aboriginal rights could be regulated by government. The court set out strict tests which were to be applied to determine if government interference with section 35 rights was justified in specific cases. While the court indicated that an Aboriginal right to fish for food would take priority over the government objective of managing

and regulating resources, it also stated that the Aboriginal food fishery could be regulated for reasons such as conservation.

Although Aboriginal rights have been recognized by the courts and affirmed in the Constitution of Canada, the content of the rights has not been clearly defined. The Supreme Court of Canada has concluded that the rights are *sui generis*, or unique to each Aboriginal group. Given that the rights are common law and not written down, their extent and nature have been subject to considerable debate.

2. The Early Treaty-Making Process

In Canada, uncertainties over the nature of Aboriginal rights have traditionally been dealt with through the signing of treaties. Following the principles set down in the *Royal Proclamation of 1763*, Aboriginal rights to lands and resources have, in many cases, been purchased by the Crown before non-Native peoples moved into an area in any significant numbers. In exchange for certain rights and benefits, such as the receipt of reserve lands, Indian groups in parts of Canada have surrendered their claims to Aboriginal rights. Such land cession treaties were entered into in the 19th and early 20th centuries in Ontario, the prairie provinces, parts of Vancouver Island and northern British Columbia, and a portion of the Northwest Territories and southeast Yukon.

Defining the special rights of Aboriginal groups in treaties has long been an important aspect of the relationship between Aboriginal peoples and the Crown. As was noted above, when the *Constitution Act, 1982* was passed, existing treaty rights were recognized and affirmed, and thereby given special protection. A 1983 constitutional amendment made it clear that treaty rights include "rights that now exist by way of land claims agreements or may be so acquired" (section 35[3]).

3. Federal Land Claims Policy

The evolution and development of the federal government's land claims policy has been closely linked to court decisions, particularly decisions of the Supreme Court of Canada. The initial claims policy statement of August 1973 was prompted by the *Calder* decision of that year. To address the uncertainty created by the decision, the federal government announced that it was willing to negotiate land claims settlements with Native peoples. As the policy developed, claims were divided into two broad categories - comprehensive and specific claims.

Comprehensive Claims - are based on the concept of continuing Aboriginal rights and title which have not been dealt with by treaty or other legal means.

Specific Claims - arise from the alleged non-fulfilment of Indian treaties and other lawful obligations, or the improper administration of lands and other assets under the *Indian Act* or formal agreements.

COMPREHENSIVE CLAIMS

OBJECTIVES OF COMPREHENSIVE CLAIMS SETTLEMENTS

The primary purpose of comprehensive claims settlements is to conclude agreements with Aboriginal groups that will resolve the debates and legal ambiguities associated with the common law concept of Aboriginal rights and title. Uncertainty with respect to the legal status of lands and resources, which has been created by a lack of political agreement with Aboriginal groups, is a barrier to economic development for all Canadians and has hindered the full participation of Aboriginal peoples in land and resource management. The comprehensive claims process is intended to lead to agreement on the special rights Aboriginal peoples will have in the future with respect to lands and resources. It is not an attempt to define what rights they may have had in the past.

Negotiated comprehensive claims settlements provide for the exchange of undefined Aboriginal rights over an area of traditional use and continuing occupancy, for a clearly defined package of rights and benefits codified in a constitutionally protected settlement agreement. The objective is to negotiate modern treaties that provide a clear, certain and long-lasting definition of rights to land and resources.

ACCEPTANCE OF CLAIMS FOR NEGOTIATION

The criteria used by the federal government to determine if a claim will be accepted for negotiation were derived initially from the 1979 *Baker Lake* decision. In this decision, Mr. Justice Mahoney elaborated on the *Calder* decision and established a common law test for determining whether there are continuing Aboriginal rights. In order for its comprehensive claims submission to be accepted, an Aboriginal group must demonstrate all of the following:

1. The Aboriginal group is, and was, an organized society.

2. The organized society has occupied the specific territory over which it asserts Aboriginal title since time immemorial. The traditional use and occupancy of the territory must have been sufficient to be an established fact at the time of assertion of sovereignty by European nations.

3. The occupation of the territory by the Aboriginal group was largely to the exclusion of other organized societies.

4. The Aboriginal group can demonstrate some continuing current use and occupancy of the land for traditional purposes.

5. The group's Aboriginal title and rights to resource use have not been dealt with by treaty.

6. Aboriginal title has not been eliminated by other lawful means.

The application of the claims acceptance criteria derived from *Baker Lake* has been amended in response to the 1990 Supreme Court judgment in the *Sparrow* case. This decision established a test for the unilateral ending of Aboriginal rights by lawful means. In order to establish that such lawful elimination has occurred, it must be demonstrated that the Crown exercised a clear and plain intention to do so. In response to the court's guidance, the federal government has undertaken a review of claims which have been rejected on the basis of supersession by law to determine if the *Sparrow* test leads to different conclusions concerning acceptability. New claims submissions are being reviewed in accordance with the *Sparrow* decision.

It is generally recognized that government funding is necessary for the research and preparation of claims submissions. The amounts of money required to assemble the documentation needed to substantiate a comprehensive claim are beyond the resources available to most Aboriginal groups.

Research funding is managed by the Research Funding Division of the Policy and Consultation Sector of the Department of Indian Affairs and Northern Development. This Research Funding Division is separate from the Comprehensive Claims Branch, thereby preserving a significant degree of autonomy between the claims preparation process and the federal government's claim negotiation program. Aboriginal groups that wish to prepare a comprehensive claims submission can apply to the Research Funding Division for a research grant. Such requests are evaluated and a decision is made on the merits of each individual case. Once a comprehensive claim is accepted and active negotiations begin, the Aboriginal party is provided with loan funding to support the negotiation process. The loans are repaid after settlement through deductions from the Aboriginal party's financial compensation payments.

PROVINCIAL AND TERRITORIAL INVOLVEMENT

Federal, provincial and territorial governments and Aboriginal groups are under no legal obligation to negotiate comprehensive claims settlements. As a matter of policy, however, the federal government is committed to resolving the claims of Aboriginal peoples through co-operation and negotiation. Negotiation is the best way to resolve conflicts between Native peoples and other Canadians, when Aboriginal peoples are claiming rights to lands and resources which are also utilized by others.

In the provinces, most of the lands and resources that are the subject of negotiations and that are required for the settlement of comprehensive claims are owned by the province and are under provincial jurisdiction. Moreover, by establishing certainty of

title to lands and resources, claims settlements benefit the provinces. It is the position of the federal government that provincial governments must participate in comprehensive claims negotiations and must contribute to the provision of claims benefits to Aboriginal groups. The federal government is currently negotiating cost-sharing agreements with the governments of British Columbia, Newfoundland and Labrador, and Quebec.

Negotiations with provinces are often complex, reflecting the difficulty of fairly recognizing contributions of land and other non-cash benefits, the lack of clear legal obligations for governments to contribute, and the difficulty of predicting costs before an agreement has actually been negotiated with Aboriginal parties. Canada's goal in negotiating cost-sharing agreements is to provide a solid foundation for claims negotiations so that they can be effective, concluded in a reasonable amount of time, and properly implemented. Federal and provincial governments need to know where their respective responsibilities lie so that their negotiators can be provided with clear mandates.

In the Yukon and Northwest Territories, most lands and resources fall under federal jurisdiction. Nevertheless, territorial governments participate fully in claims negotiations and have made commitments to Aboriginal groups through the claims settlements.

SCOPE OF NEGOTIATIONS

Comprehensive claims settlements are negotiated to clarify the rights of Aboriginal groups to lands and resources, in a manner that will facilitate their economic growth and contribute to the development of Aboriginal self-government. Settlements are intended to ensure that the interests of Aboriginal groups in resource management and environmental protection are recognized, and that claimants share in the benefits of development.

In order to achieve these objectives, settlement agreements define a wide range of rights and benefits to be exercised and enjoyed by claimant groups. These rights and benefits usually include full ownership of certain lands in the area covered by the settlement; guaranteed wildlife harvesting rights; guaranteed participation in land, water, wildlife and environmental management throughout the settlement area; financial compensation; resource revenue-sharing; specific measures to stimulate economic development; and a role in the management of heritage resources and parks in the settlement area. Settlement rights are constitutionally protected and cannot be altered without the concurrence of the claimant group.

Due to the comprehensive nature of the items negotiated in a comprehensive claims settlement, and the complexity of the issues to be resolved before such a permanent agreement can be signed, negotiations typically take many years. Aboriginal peoples

and governments often come to the table with fundamentally different conceptions of the nature of Aboriginal rights and the form which the final settlement should take. These differences must be resolved before settlements can be finalized. Negotiated settlements involve the legitimate rights of both Aboriginal peoples and non-Native peoples; consequently, these agreements cannot be concluded in a hasty or arbitrary fashion.

Some issues, such as arrangements for specific federal programs for Indians, do not belong in comprehensive claims settlements because they call for solutions that can be adjusted rapidly to adapt to changing needs. Since comprehensive claims settlements are constitutionally protected, they cannot offer such flexibility. The resolution of such issues is sought through discussions outside the comprehensive claims negotiation process. Beneficiaries of claims settlements retain their eligibility for normal government programs in accordance with general program criteria established from time to time.

POLICY REVIEW

The federal government's Claims Policy Statement of 1973 was clarified and reaffirmed in a 1981 statement on comprehensive claims policy entitled "In All Fairness." During the early 1980s, however, there was growing dissatisfaction among Aboriginal groups with respect to certain aspects of the policy, including the requirement for blanket extinguishment of Aboriginal rights in exchange for defined rights and benefits. This discontent was reflected in the 1983 report of the all-party Special Committee of the House of Commons on Indian Self-Government. It made several recommendations concerning the resolution of land claims.

By 1985, it had become clear that dissatisfaction with the existing policy was interfering with progress at the negotiating table. In July 1985, the Minister of the Department of Indian Affairs and Northern Development appointed a Task Force to Review Comprehensive Claims Policy and asked it to undertake a fundamental review of the current federal policy.

Following extensive consultations with Aboriginal groups, including those with whom claims were being negotiated, and with provincial and territorial governments, non-Aboriginal organizations and individuals, the Task Force released its report in March 1986. Its major recommendations included the broadening of policy objectives and application, the development of alternatives to extinguishment, an increase in the number of items negotiable in a claims settlement, and improvements in the process for negotiating and implementing agreements.

REVISED 1986 COMPREHENSIVE LAND CLAIMS POLICY

In December 1986, the Minister of the Department of Indian Affairs and Northern Development announced significant amendments to the Comprehensive Claims Policy, in response to the Task Force's recommendations. Some key elements of the revised policy are as follows:

1. Exchange of Rights

   It is often stated that the federal government is seeking to end, or extinguish, all Aboriginal rights through claims settlements. This is not the case. The government's objective is to negotiate agreements that will provide certainty of rights to lands and resources in areas where Aboriginal rights have not yet been dealt with by treaty or other legal means. In doing so, the special rights of Aboriginal groups that are agreed upon are set out in constitutionally protected agreements or treaties.

   In order to avoid ambiguity and uncertainty, the federal government seeks confirmation from Aboriginal groups that the rights written down in claims settlements are the full extent of their special rights related to the subjects of the agreements. To accomplish this, Aboriginal groups are asked to relinquish undefined Aboriginal rights which they may have with respect to lands or resources, in favour of the rights and other benefits which are written down in the settlement agreement.

   Under the 1986 Comprehensive Land Claims Policy a claimant group may retain any Aboriginal rights that it may have with respect to the lands it will hold following a settlement, so long as such rights are not inconsistent with the final agreement. The policy also ensures that those Aboriginal rights which are not related to land and resources or to other subjects under negotiation will not be affected by the exchange of rights in the negotiated settlement.

2. Self-Government

   The policy permits negotiators to include in comprehensive claims agreements a constitutionally entrenched commitment to negotiate self-government agreements. Self-government negotiations may take place at the same time as comprehensive claims negotiations, and are carried out in accordance with federal policy on community self-government negotiations. Negotiated self-government agreements are enacted by separate legislation, but the policy states that they will not receive constitutional protection until there is a general constitutional amendment to that effect.

In 1991 Canada made a commitment to reconsider its policy on the constitutional protection of self-government agreements negotiated with comprehensive claims should the constitutional process then underway not succeed. It was noted that the positions of provincial and territorial governments would form part of this reconsideration.

3. Resource Revenue-Sharing

The 1986 policy makes it clear that the federal government is prepared to negotiate resource revenue-sharing with claimant groups, so they may share in the benefits of non-renewable resource development. A claimant group may receive a share of federal royalties derived from resource extraction throughout the area covered by the group's settlement agreement.

Resource revenue-sharing arrangements do not imply that claimant groups have resource ownership rights. The federal or provincial government will be responsible for resource revenue instruments and must maintain its ability to adjust the fiscal regime. Existing or potential resource revenue-sharing arrangements arising out of comprehensive claims negotiations will be taken into account in any federal-territorial negotiations on resource revenues.

4. Environmental Management

The 1981 policy provided for enhanced Aboriginal involvement in environmental management through membership on advisory committees, boards and other similar bodies. The 1986 policy states that Aboriginal interests in environmental matters, particularly as these relate to wildlife management and the use of land and water, may also be addressed through participation in government bodies that have decision-making powers. Such arrangements must recognize that government has an overriding obligation to ensure resource conservation, to protect the interests of all users, to respect international agreements, and to manage renewable resources within its jurisdiction.

5. Offshore Areas

The 1986 policy statement clarified federal policy by noting that, if an Aboriginal group's traditional activities have extended to offshore areas, their claim settlement may include offshore wildlife harvesting rights. To the extent possible, negotiations are to be conducted in accordance with the same principles which are applied to land areas. Participation in environmental management regimes and resource-revenue sharing arrangements may also be negotiated with respect to offshore areas.

6. Interim Measures

The 1986 policy provides that appropriate interim measures may be established to protect the interests of a claimant group while its claim is being negotiated.

7. Implementation Plans

The 1986 policy states that, in order for final agreements with claimant groups to be ratified by the federal government, they must be accompanied by implementation plans outlining the obligations of all parties. This will ensure efficient and timely implementation of the various elements of a settlement agreement.

EXPANSION OF THE COMPREHENSIVE CLAIMS PROCESS AS PART OF THE NATIVE AGENDA

The fair and timely resolution of comprehensive claims is a priority of the Government of Canada. On September 25, 1990, the Prime Minister announced that, as part of a federal Native Agenda to address issues of concern to Aboriginal peoples in Canada, the process for the negotiation of comprehensive claims would be expanded. The previous six-claim limit on the number of negotiations which could be undertaken at one time was eliminated. Since the fall of 1990, eight claims have been under negotiation, and one of them has reached final settlement. The federal government expects to negotiate at least 30 additional claims over the next decade.

STATUS OF NEGOTIATIONS

Settled Claims

Four comprehensive claims settlements have been concluded since the announcement of the federal government's claims policy in 1973. These include the James Bay and Northern Quebec Agreement (1975), the Northeastern Quebec Agreement (1978), the Inuvialuit Final Agreement (1984) and the Gwich'in Comprehensive Land Claim Agreement (1992).

1. The James Bay and Northern Quebec Agreement, and the Northeastern Quebec Agreement

These agreements represent Canada's first modern treaties. The governments of Canada and Quebec, the Cree and Inuit of Northern Quebec and Hydro-Québec signed the landmark James Bay and Northern Quebec Agreement on November 11, 1975. The Naskapi Indian Band followed suit, signing the Northeastern Quebec Agreement on January 31, 1978.

Rights and benefits negotiated in these final agreements included: $225 million (1975 dollars) in financial compensation for the 15,932 James Bay Cree and Inuit, $9 million (1978 dollars) for the 465 Naskapi, and additional funding as electrical generating capacity was expanded; property rights over 14,000 square kilometres of land; exclusive wildlife harvesting rights over 150,000 square kilometres; participation with government in an environmental and social protection regime; an income security program for hunters and trappers; and self-government, established under the *Cree-Naskapi Act*. Proclaimed in 1984, *The Cree-Naskapi Act* recognized local Indian government powers and set up a system of land management.

2. The Inuvialuit Final Agreement

This agreement was signed in 1984 by the governments of Canada, the Northwest Territories and the Yukon, and by the Committee for Original Peoples' Entitlement, representing the 2,500 Inuvialuit of the Western Arctic. The terms of the agreement include: full ownership of 91,000 square kilometres of land (including 11,000 square kilometres of subsurface rights); $152 million (1984 dollars) in financial compensation, plus a one-time payment of $10 million to assist the Inuvialuit in social development; guaranteed wildlife harvesting rights; socio-economic measures designed to stimulate economic development; and participation in decision-making processes for wildlife and environmental management.

3. The Gwich'in Agreement

The 2,200 Gwich'in of the Mackenzie River Delta signed a final agreement with the governments of Canada and the Northwest Territories on April 22, 1992. Under the terms of this agreement, the Gwich'in will receive: ownership of 22,420 square kilometres of land (including 6,160 square kilometres of subsurface rights) in the Northwest Territories and 1,550 square kilometres of federal land in the Yukon; a tax-free capital transfer of $75 million (1990 dollars); a portion of resource royalties payable in respect of the Mackenzie River Valley; guaranteed wildlife harvesting rights; participation in decision-making structures dealing with wildlife, land and environmental management; and rights of first refusal to a variety of wildlife activities. The bill to bring the agreement into effect received Royal Assent on December 17, 1992, and was proclaimed by order-in-council on December 22, 1992.

Claims in Negotiation

In recent years, very substantial progress has been made in the negotiation of other comprehensive claims. Three final agreements, which cover much of the territory in

northern Canada, are nearing completion, four other claims are under negotiation, and one claim has recently been accepted for negotiation.

1. Tungavik Federation of Nunavut (TFN) Claim

Completed on December 14, 1991, the final agreement negotiated for this claim represents the largest comprehensive claim settlement in Canada. Under the terms of the agreement, the Inuit of the Eastern Arctic will receive: title to 350,000 square kilometres of land; $580 million (1989 dollars) in financial compensation; a share of resource royalties; and guaranteed wildlife harvesting rights and participation in decision-making processes dealing with land and environmental management. An Inuit ratification vote was held from November 3 to 5, 1992, and resulted in Inuit approval of the agreement. The government ratification process is anticipated to be completed in early 1993, after implementation plans are finalized.

In conjunction with the final agreement on the TFN comprehensive claim, the federal government has made a commitment to recommend legislation to Parliament to divide the Northwest Territories in order to create a Nunavut Territory. A political accord outlining the powers of and timing for a Nunavut Territorial Government was signed by the federal and territorial governments and the TFN on October 30, 1992. The Government of Nunavut will be a public government; however, since the Inuit will constitute a majority of Nunavut electors, the new territorial government will constitute *de facto* self-government for the Inuit of the Eastern Arctic. A referendum dealing with the boundary of the proposed new territory was held on May 4, 1992, and a majority of residents of the N.W.T. voted in favour of it.

2. Council for Yukon Indians Claim

On December 7, 1991, the Council for Yukon Indians (CYI) ratified an umbrella final agreement (UFA). The UFA is the first part of a two-stage comprehensive claim settlement that deals with territory-wide matters. Under the terms of the UFA, Yukon Indian people will be entitled to 41,440 square kilometres of land, $248 million (1990 dollars) in financial compensation, a share of Yukon government resource revenues when and if these are transferred to the Yukon, and guaranteed participation in land and resource management.

The UFA establishes the basis for negotiation of individual settlements with each of the 14 Yukon First Nations (YFNs). Yukon First Nation Final Agreements (YFNFAs) have since been finalized with the Vuntut Gwitchin (Old Crow) First Nation on May 31, 1992, the Nacho Nyak Dun on June 12, 1992, the Champagne and Aishihik First Nations on June 19, 1992, and the

Teslin Tlingit Council on November 6, 1992. Negotiations are commencing with five other Yukon First Nations.

The Champagne and Aishihik First Nations recently completed the ratification vote for their final agreement. It is expected that ratification of the Vuntut Gwitchin, Nacho Nyak Dun and Teslin Tlingit final agreements will take place during the winter. Federal Cabinet approval of the UFA and four YFNFAs will be sought following ratification by the YFNs and completion of implementation plans, after which federal settlement legislation will be enacted. The Government of the Yukon has introduced legislation to ratify the UFA and the Champagne and Aishihik First Nations final agreement.

The UFA provides for a guaranteed process for negotiation of self-government agreements with Yukon First Nations. Four self-government agreements have been initialled and will be enacted by separate legislation.

3. Sahtu Claim

In April 1990, negotiators for the Dene/Métis of the Northwest Territories (N.W.T.) and the governments of Canada and the N.W.T. initialled a final comprehensive claims agreement for the overall claim of the Dene and Métis of the western N.W.T. However, in July of that year, a motion of the joint Dene/Métis assembly called for renegotiation of fundamental elements of the initialled agreement, effectively rejecting the agreement as negotiated.

On discontinuing the overall Dene/Métis claim, the federal government agreed to negotiate regional settlements based on the April 1990 agreement with any of the five Dene/Métis regions that might request them. The Gwich'in Tribal Council had already asked for such negotiations and, as noted above, a settlement has been concluded with this group.

The 1,600 Sahtu Dene and Métis also asked for settlement of their comprehensive claim on a regional basis, and negotiations with the Sahtu Tribal Council opened in October 1991, and a final agreement was reached by the negotiators on January 13, 1993. A ratification vote by the Sahtu Dene and Métis is expected in April 1993.

4. Dogrib Claim

Another regional claim, for the 4,300 Dogrib of the North Slave region, was accepted for negotiation on December 2, 1992. Negotiations are expected to commence early in 1993.

5. Nisga'a Claim

The Nisga'a Tribal Council's claim to 23,750 square kilometres of land in northern British Columbia was accepted by the federal government in 1976. Bilateral negotiations on matters under federal jurisdiction continued for a number of years until October 1990, when the province agreed to join the negotiations. On March 20, 1991, Canada, B.C. and the Nisga'a signed a tripartite framework agreement outlining the process, topics and parameters for negotiation. Negotiations are now underway on issues such as lands, resources and Nisga'a Government. The agreed target for reaching an agreement-in-principle is 1993.

6. Conseil des Atikamekw et des Montagnais (CAM) Claim

The Conseil des Atikamekw et des Montagnais, which represents 15,000 Aboriginal members, has submitted a claim covering 700,000 square kilometres in Quebec and Labrador. The claimant group signed a framework agreement with the Province of Quebec and the Government of Canada in September 1988, outlining the parameters of the negotiations. Negotiations are proceeding towards an agreement-in-principle. The governments of Canada and Quebec are also negotiating how they will share the costs and responsibilities associated with the claims settlement.

7. Labrador Inuit Association (LIA) Claim

The Labrador Inuit Association represents approximately 3,800 Aboriginal people who inhabit the coastline, interior and offshore areas of northern Labrador. In November 1990, the LIA signed a framework agreement with the Government of Canada and the Government of Newfoundland and Labrador, establishing the parameters for negotiation of their claim.

8. Innu Nation Claim

The Innu Nation represents 1,500 Naskapi and Montagnais Indians who assert continuing Aboriginal rights throughout Labrador and northern Quebec. Canada conditionally accepted the Innu claim for negotiation in 1978, subject to provincial participation and submission of a land use and occupancy study by the Innu. The Innu completed their occupancy study in October 1990, and the Government of Newfoundland and Labrador confirmed its willingness to negotiate in September 1990. Negotiations towards a framework agreement began in July of 1991.

The Government of Canada is focusing its present attention on negotiating an agreement with the Province of Newfoundland and Labrador on government

roles and responsibilities in the settling of the Innu and LIA comprehensive claims. The conclusion of this agreement will allow for clarification of the mandates of the federal negotiators and will accelerate settlement of the claims.

9. Claims in British Columbia

The federal government expects to negotiate about 30 claims in the province of British Columbia over the next decade. On July 3, 1991, a tripartite British Columbia Claims Task Force released a report containing significant recommendations on how to negotiate settlements in the province. On November 13, 1991, the federal government accepted all 19 of the Task Force recommendations. The First Nations Summit (representing First Nations that have agreed to participate in the Treaty Commission process) and the Government of British Columbia have also accepted the recommendations.

An agreement on the establishment of a B.C. Treaty Commission was signed on September 21, 1992, by the Prime Minister, the Premier of British Columbia and Summit leaders. The Commission will be an impartial body which will facilitate and monitor treaty negotiations. An agreement-in-principle on sharing costs of the Commission has also been reached by federal and provincial governments. Canada is ready to move forward with establishment of the Commission by order-in-council, as soon as there is agreement on the names of the commissioners.

The Treaty Commission will be an impartial, arms-length organization. The First Nations Summit will nominate two commissioners while British Columbia and Canada will each nominate one commissioner; a Chief Commissioner will be nominated by all the parties. Functioning as a "keeper of the process," the Commission will not negotiate agreements, but will co-ordinate the commencement and conduct of treaty negotiations, ensure that they proceed in an effective and timely manner, and provide dispute resolution assistance when requested. In addition, the Commission will allocate and manage distribution of negotiation funding to First Nations, will provide the Minister of the Department of Indian Affairs and Northern Development with an annual report for tabling in Parliament, and will make other public reports as it considers appropriate.

Canada has agreed that the treaty negotiation process will be open to all B.C. First Nations. The vast majority of First Nations in the province have never signed or adhered to treaties and will not be required to demonstrate continuing use of resources in order to begin negotiations.

The federal government is also prepared to participate in negotiations with First Nations that have adhered to Treaty 8, on issues which may include: self-

government and, with provincial agreement, land and resource management in public lands; other land and resources issues; and rights consistent with those agreed to for other B.C. First Nations. For all First Nations in the Treaty 8 area, land and resource benefits should be comparable to those available by adherence to Treaty 8.

The federal government is negotiating an agreement on the sharing of costs and responsibilities for claims settlements with the government of B.C. It is the federal government's position that a cost-sharing agreement must be concluded before negotiations begin with First Nations. A joint interim report by the negotiators was provided to the federal Minister of the Department of Indian Affairs and Northern Development and to the British Columbia Minister of Aboriginal Affairs on June 30, 1992, and cost-sharing negotiations are being actively pursued.

SPECIFIC CLAIMS

OBJECTIVES OF THE SPECIFIC CLAIMS POLICY

The government's primary objective with respect to specific claims is to discharge its lawful obligation to Indian bands.

The government recognizes claims by Indian bands that disclose an outstanding lawful obligation - an obligation on the part of the federal government derived from the law. A lawful obligation may arise in any of the following circumstances:

- the non-fulfilment of a treaty or other agreement between Indians and the Crown;
- a breach of an obligation under the *Indian Act* or other statutes pertaining to Indians and the regulations under them;
- a breach of obligation arising out of government administration of Indian funds or other assets; and
- an illegal disposition of Indian land.

The government also acknowledges claims arising from the following circumstances:

- failure to provide compensation for reserve lands taken or damaged by the federal government or any of its agencies under authority; and
- fraud in connection with the acquisition or disposition of Indian reserve land by employees or agents of the federal government where the fraud can be clearly demonstrated.

Examples of specific claims:

- The Big Cove Indian Band in New Brunswick asserted that the sale of 202 hectares from the reserve did not follow the conditions of the band's surrender of lands in 1879, and submitted its claim in 1973. The claim was settled, and cash compensation of $3.2 million was paid to the band in 1988.

- The Lower Kootenay Indian Band asserted that 972 hectares of land promised in 1908 by Canada were never set apart as a reserve. The claim was submitted in 1984, and settled in 1989 for $4.7 million.

Treaty Land Entitlement (TLE) claims represent a subset of specific claims. They relate to a group of treaties that were signed with Indian bands, mainly in the prairie provinces. Under these treaties the size of a reserve was based on a number of hectares (usually 51) per person in the band. The population of each band was to be determined and the reserve land fixed according to surveys. However, not all band populations and lands were measured promptly or accurately. As a result, some bands

have claimed outstanding entitlement for those band members who were not originally counted. Such claims are categorized as TLE claims.

THE 1981 POLICY REVIEW

In 1973 the Department of Indian Affairs and Northern Development created the Office of Claims Negotiation, subsequently the Office of Native Claims. One negotiator with limited support staff was assigned to resolve both comprehensive and specific claims.

By 1981, only 12 of over 70 specific claims accepted for negotiation had been settled. Another 80 claims submissions still awaited a decision on whether they would be accepted for negotiation at all. Frustrations grew. A review of the policy and process was undertaken and a number of changes were announced in 1981.

As a result of the review, the criteria for acceptance of specific claims were expanded and new criteria for compensation were developed. Of particular note was the government's decision *not* to apply statutes of limitation or the doctrine of laches. Limitation statutes are federal or provincial statutes which prohibit taking a claim before the courts after a certain prescribed length of time. The doctrine of laches is a common law rule whereby the courts will not hear a claim if the claimant has, in the opinion of the court, waited too long to bring forward the claim. These defences would disqualify many Indian specific claims.

A major objective of the 1981 review was to articulate more clearly the objectives and criteria of the Specific Claims Policy. These were published in "Outstanding Business," a DIAND publication.

As a result of the 1981 review a separate branch was set up to deal with specific claims only. Nonetheless, by the end of the decade only three or four negotiated settlements were being achieved each year - fewer than the number of claims being submitted, with the result that the backlog of unresolved specific claims kept growing. The total settlement budget of approximately $15 million a year did not seem to be a major constraint, since it was not fully utilized in some years. Rather, the complexity and labour intensiveness of the process were repeatedly under-estimated, so that the process within both DIAND and the Department of Justice tended to be understaffed.

Three Main Criticisms

While the 1981 review resulted in some improvements, it fell short of responding to all concerns. Indians continued to argue that the Specific Claims program was:

1. too slow, with the result that too few claims were settled;

2. inherently unfair because of the government's multiple role as trustee of the Indian people, defender of the Crown's interests and judge for each claim submitted; and

3. overly restrictive in its acceptance criteria, thus excluding legitimate claims.

Minister's Meetings with Chiefs' Committee on Specific Claims

On October 10 and 11, 1990, the Minister of the Department of Indian Affairs and Northern Development met with 20 Indian leaders to discuss how to improve the process for settlement of specific claims. The Indian participants proposed that a working group be established and that Indian leaders across Canada be canvassed for their views. Chief Clarence T. Jules of the Kamloops Indian Band and Mr. Harry LaForme, then Commissioner of the Indian Commission of Ontario, were chosen to co-chair this group, which came to be known as the Chiefs' Committee on Specific Claims. On December 14, 1990, the co-chairs presented the Minister with a report which had already been approved by a Special Assembly of the Assembly of First Nations, the Chiefs of Ontario and the Indian Association of Alberta. The Chiefs' Committee recommended that:

1. substantially more resources, both human and financial, be dedicated to the settlement of specific claims;

2. an independent authority be established so that specific claims could be dealt with more fairly;

3. a joint Indian/government task force be established to analyze and make recommendations on policy and process measures; and

4. the processing of claims in the existing system be accelerated and not delayed because of implementing new measures.

GOVERNMENT RESPONSE

In January 1991, the Minister of the Department of Indian Affairs and Northern Development met with First Nations representatives in Toronto to discuss the recommendations in their report. The Prime Minister had already announced in September 1990, that the resolution of claims would be one of the four pillars of Canada's Native Agenda, the government's plan of action "to preserve the special place of First citizens in this country."

On April 23, 1991, the Prime Minister announced the new $355 million federal government initiative on Specific Claims to resolve claims more quickly, efficiently and fairly. The initiative involved the following major components.

1. Increased Resources

   Funds for payment under settlements were quadrupled from $15 million to $60 million annually. Additional staff were provided to DIAND and the Department of Justice to speed up the processing of claims.

2. Administrative Policy Adjustments

   As an immediate measure, the following administrative policy adjustments were approved in order to speed up the process.

   - The amount that the Minister of the Department of Indian Affairs and Northern Development is authorized to approve for payments of settlements without Treasury Board authority was increased from $1 million to $7 million. This change has enabled departmental officials to forego the preparation and processing of a Treasury Board submission for settlements under $7 million.

   - A "fast track" process was set up to resolve smaller claims still more quickly and efficiently. About one third of the claims settled to date have involved $500,000 or less. These claims accounted for less than two percent of total settlement funds paid to date.

   - There is no limit to the number of claims that can be negotiated at any one time.

   - Legal costs of bands no longer require the review and approval of the Department of Justice. Instead, legal costs are to be treated in the same manner as other negotiating costs. The negotiator, with the participation of the Department of Justice, will determine with the band at the outset of negotiations the legal fees which the government will be prepared to support.

3. Pre-Confederation Claims

   The 1982 guideline restricting acceptance for negotiation of pre-Confederation claims was revoked. The 1982 guidelines excluded consideration of any claim based on events before 1867, "unless the federal government specifically assumed responsibility therefor."

As with all other specific claims, pre-Confederation claims must still demonstrate a lawful obligation of the government.

4. The Indian Specific Claims Commission

It was agreed that an independent authority be established to review specific claims.

The purpose of the Commission is:

- to review disputes between claimant bands and the government to determine whether, under the terms of the policy, a lawful obligation has been established and whether the compensation criteria which are applicable are the most appropriate; and

- when both parties agree, to assist the government and claimant bands in arranging mediation on any aspect of the negotiations.

After consideration of an appeal, the Commission makes its recommendations to the parties involved, including reports from time to time to the Governor in Council. Settlement amounts are still negotiated between the band and the government, and not by the Commission.

It is important to note that the Commission is transitional in nature, a feature agreed to by both the Chiefs' Committee on Specific Claims and the federal government.

5. The Joint First Nation/Government Working Group (JWG) on Specific Claims Policy and Process

In addition to the Commission, the Joint First Nations/Government Working Group on Specific Claims was created to consider criticism that the existing Specific Claims Policy and process are overly restrictive. The first meeting of the JWG was held in February 1992. The JWG will be reviewing and making recommendations on all the existing acceptance and compensation criteria upon which the Specific Claims Policy is based. The JWG will also make recommendations on the design of a dispute resolution system or process for resolving such claims between the federal government and First Nations. The group's recommendations will encompass the future evolution of the Indian Specific Claims Commission.

An "Evaluation Study on Claims" is presently underway. Objectives of this study are to examine claims that have been settled and those where negotiations have broken off in order to determine:

- strengths and weaknesses of the negotiation process and possible ways to improve this process;

- any trends or patterns which may have caused delays and avoidable aggravations in the negotiation process;

- the extent to which settlements have been implemented as promised or expected (e.g., were trust accounts established on time, and were intentions to establish reserves followed up in a timely fashion?);

- the effects of settlements, including the extent to which the specific claims settlements ameliorated the felt grievances of the bands; and

- recommendations on how the Specific Claims Policy and process could be improved.

Other studies include reviews of federal and provincial legislation having a bearing on claims and of alternative dispute resolution mechanisms.

A protocol setting out the agreed objectives of the JWG and describing the nature of the working relationship between the two parties was signed by the Minister and the National Chief of the Assembly of First Nations. Under this protocol, the JWG is required to provide quarterly progress reports to the Minister and the National Chief. A final report is expected by June 1993.

6. Funding for Bands to do Research on Specific Claims

The Department of Indian Affairs and Northern Development administers a contribution and loan program to assist Native participants in the specific claims process. In the fiscal year 1992/93, $7.8 million in contributions was available for the research, development and presentation of claims. The largest proportion of this amount was allocated to provincial Indian associations working on behalf of their member bands. In addition, loan funds totalling $5.4 million per year are available to assist claimant bands in negotiating the settlement of their specific claims.

The Research Funding Division in the Policy and Consultation Sector of DIAND is responsible for specific claims funding, as it is for comprehensive claims. The issue of how specific claims research funding should be allocated and how the research organizations should be evaluated will be a subject for discussion by the JWG.

RESULTS TO DATE

Table I: Specific Claims Concluded (Cumulative to 1991/1992)

Settlement Agreement	66
Rejected	48
Litigation	28
Administrative Referral*	72
File Closed	52
Total	**266**

* Administrative solutions or remedies to grievances that are not suitable for resolution, or cannot be resolved, through the Specific Claims process. Sometimes it is apparent that a grievance may not be a lawful obligation but rather a problem that can and should be redressed by direct administrative action. To avoid a lengthy negotiation process, these are referred to the department for administrative resolution.

Table II: Claims in Process at End of Fiscal Year 1991/1992

Under Review	354
Under Negotiation	62
Total	**416**

An ongoing effort to resolve specific claims more speedily has been stimulated by the launch of the specific claims initiative in the Native Agenda. In the late 1980s, specific claims were being settled at the rate of about three or four each year and the total annual settlement budget was about $14 million. In the 18 months since the announcement of the initiative in April 1991, a further 24 claims have been settled, at a total value of approximately $26 million. As well, DIAND has accepted a number of new claims and continues to negotiate with First Nations to settle outstanding claims. Up to 25 specific claims, with a total value of approximately $50 million, were expected to be settled in 1992-1993. An additional 30 claims were expected to be resolved in other ways (non-acceptance, referral to other processes, file closing by claimants, referral to court).

Examples of claims settled in the last 18 months include:

- an agreement signed by the Island Lake (Ministikwan) Indian Band of Saskatchewan and the governments of Canada and Saskatchewan in July 1991, resolving a land claim dating back to 1914.

- a November 1991 settlement with the Kawacatoose Indian Band (Saskatchewan) compensating the band for the loss of reserve land in 1918. Under the agreement, the band received $3.02 million to be used to purchase land and compensate them for the loss of past use of the land. The federal government will consider transferring to reserve status up to 3,347 hectares of land, if the land is purchased by the band.

- a January 1992 settlement valued at $3.75 million, signed by the governments of Canada and Alberta and the Grouard Indian Band (Alberta), on the band's treaty land entitlement claim.

- a July 1992 agreement with the Kwakiutl Indian Band of British Columbia on the band's specific claim, which was accepted for negotiation in 1989. Under the agreement, the band will receive $940,000 and 105 hectares of land as compensation for the loss of the Tsulquate Reserve in the 1960s.

Treaty Land Entitlement (TLE)

Saskatchewan:

A historic agreement on Treaty Land Entitlement (TLE) in Saskatchewan was signed by the Prime Minister, the Premier of Saskatchewan, the Grand Chief of the Federation of Saskatchewan Indian Nations (FSIN) and 22 chiefs at a signing ceremony held on September 22, 1992. The Nikaneet Indian Band, another TLE band, also settled its claim with the federal and provincial governments on September 23, 1992. These claims are separate from the settlements referred to in Table I.

The Saskatchewan Treaty Land Entitlement project is important not only for the large amounts involved (approximately $450 million from Canada and the province over 12 years) but also because of the process by which agreement has been achieved. Late in 1989 the FSIN and Canada agreed to establish the Office of the Treaty Commissioner for Saskatchewan. As part of its mandate, the Commission was asked to review and recommend possible approaches to resolving outstanding TLEs for 27 Saskatchewan Indian bands. The Commission submitted its report and recommendations in May 1990, and Canada started to negotiate an umbrella agreement with the FSIN based on the report. Agreement was reached on a formula that produced the settlement.

In 1991, Canada and Saskatchewan settled on a cost-sharing arrangement that cleared the way for the formal signing of the Umbrella Settlement Agreement. Both Canada and the FSIN approved the agreement. The final framework agreement and cost-sharing agreement were signed by Canada, Saskatchewan and 22 chiefs on September 22, 1992.

OTHER TLE CLAIMS

In Alberta five claims have been settled on the basis of land plus a negotiated cash amount which all parties (the bands, Canada and the province) viewed to be fair. Another five claims are in active negotiation.

In Manitoba, as in Alberta, there is no equivalent to the Saskatchewan umbrella TLE agreement. Seven bands in Manitoba are currently negotiating the settlement of their claims. Another group of chiefs is studying how best to proceed, using the Saskatchewan approach as a basis for an umbrella agreement for many bands in Manitoba.

Late in 1992 four bands in the Northwest Territories decided to deal with certain grievances as TLE claims. Discussions are at a preliminary stage.

OTHER CLAIMS

There are a number of legitimate Native grievances that fall within the spirit of the comprehensive and specific claims policies, but do not meet the strict acceptance criteria of these two programs. These claims have been referred to as claims of a third kind. A number of these claims have been accepted by DIAND as requiring resolution, and the resolution of many of these grievances is being sought through negotiated settlements.

There appear to be two basic types of claims not covered by the existing program. Claims relating to Aboriginal title are similar to comprehensive claims: generally these involve situations where Aboriginal title has been lawfully dealt with, but where the process was not consistent with the reasonable standards of the time. The other type are situations relating to the Crown's responsibility to Native peoples which do not meet the criteria of the Specific Claims program, but which government believes should be dealt with on some other basis.

CLAIMS RELATING TO ABORIGINAL TITLE

The Comprehensive Claims program does not accept claims where Aboriginal title has been dealt with by treaty or other legal means. However, in certain circumstances, even though the Aboriginal title was dealt with legally, the circumstances of that process may give rise to legitimate concerns by the Aboriginal group and government. For example, in the Northwest Territories, the federal government has undertaken negotiations with First Nations in the Treaty 11 and Treaty 8 areas where some of the terms of the treaties had not been fulfilled and the provisions of the treaties did not seem well suited to the North. In Ontario, Canada has joined the negotiations between the Golden Lake Algonquins and the Government of Ontario. The Golden Lake Algonquins claim that they never signed any of the treaties that cover their traditional lands, did not receive any treaty benefits, and are linguistically and culturally distinct from those First Nations that did sign the treaties. Canada and Ontario have agreed to share equally the costs of settlement of this claim.

CLAIMS RELATING TO FEDERAL GOVERNMENT RESPONSIBILITY

The Specific Claims program does not accept claims where actions have not been in breach of the federal government's lawful obligations. However, in such cases there may, nonetheless, be legitimate grievances that could be resolved in a negotiated settlement. An example is the situation at Kanesatake, where a religious order disposed of land it owned but which was used by the Mohawk. Even though the case went to the highest court in the land and the court found against the Indians, the situation was considered to be unfair by government and a negotiated resolution is being pursued.

Several other claims of this kind have been received by the department, and detailed research is underway on each to determine if a legitimate grievance exists that could be settled by negotiation.

CONCLUSION

Since the establishment in 1973 of the federal policy for the settlement of Native land claims, substantial progress has been made. A total of 70 claims have been settled, another 69 are under active negotiation and many more will be resolved before the end of the decade. The fair and timely resolution of Native land claims is one of the four pillars of the federal government's Native Agenda, announced by the Prime Minister on September 25, 1990. In order to meet its commitment to resolve claims, the federal government has expanded the comprehensive claims process, has accelerated and reformed the specific claims process, and is taking positive steps towards the resolution of claims that do not fit within these two categories.